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ABSTRACT

This paper describes the Child Care and Development Fund (CCDF), the principal source of federal funding for child care subsidies for low income families and the principal source of federal funding for initiatives to improve the quality of child care in the states. Each state qualifies to receive an amount of federal funds under the CCDF each year and can receive additional federal funds by spending state dollars for child care subsidies and quality initiatives. Federal law established requirements that states must meet to receive CCDF funds, but states have very broad discretion in many of the basic design features of their low income subsidy programs and quality initiatives. It is estimated that about 1.5 million children receive CCDF-funded child care subsidies each month. To be eligible, a child must be under 13 years of age (or older if physically or mentally incapable of self-care). The child must reside with a family in which income does not exceed 85% of the state's median income for a family of the same size. To be eligible, a child must also reside with a parent(s) or legal guardian(s) who are working or attending job training; or a child must receive, or need to receive, protective services and resides with a parent(s) or guardian(s) who are not working or receiving job training. Other requirements are also specified. (SLD)

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The Child Care and Development Fund: An Overview

The Child Care and Development Fund (CCDF) is the principal source of federal funding for child care subsidies for low income families and is the principal source of federal funding for initiatives to improve the quality of child care in states. Each state qualifies to receive an amount of federal funds each year, and can receive additional federal funds by spending state dollars for child care subsidies and quality initiatives. Federal law establishes a set of requirements that states must meet in order to receive CCDF funds, but states have very broad discretion in many of the basic design features of their low income subsidy programs and quality initiatives. It is estimated that about 1.5 million children receive CCDF-funded child care subsidies each month.[1]

1. Administration

The Child Care and Development Fund is a federal-state cooperative program: the federal government provides funds to states, and states , in turn, must meet or satisfy federal requirements.

Each state designates a lead agency responsible for receipt of the federal funds, and the lead agency is accountable for the use of the funds received.[2] The lead agency must administer the state's CCDF funds, directly or through other governmental or nongovernmental agencies, and is responsible for the development of the state plan and for coordinating the provision of CCDF services with other Federal, State, and local child care and early childhood development programs.[3] The state plan covers

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[1] See U.S. Department of Health and Human Services, Administration for Children and Families, **Access to Child Care for Low-Income Families** (October 19, 1999), http://www.acf.dhhs.gov//programs/ccb/reports/ccreport.htm.

[2] 45 C.F.R. §98.2.

[3] 45 C.F.R. §98.10.

a two-year period, and is required to include detailed information about numerous aspects of a state's use of CCDF funds.[4]

At the federal level, CCDF is administered by the Child Care Bureau, within the Administration for Children and Families, U.S. Department of Health and Human Services.[5]

2. Funding and Allowable Uses

While CCDF is often thought of as one program, it actually involves three separate funding streams of federal funds (and in some states, four) and additional state funds. The principal reason for the multiple funding streams is that the current structure of CCDF emerged in 1996 by combining several then-existing child care programs. In the resulting structure:

- Each state qualifies each year for a share of an amount of "discretionary" federal funds, i.e., funds subject to the annual Congressional appropriations process;
- In addition, each state qualifies for an amount of "mandatory" funds, representing the amount of funding that the state had been receiving from a set of federal child care programs in a base period;
- In addition, a state can elect to receive additional "matching" federal funds if the state meets certain "maintenance of effort" requirements (mandating that the state continue the level of state funding that had existed in a base period) and if the state commits additional state funds to draw down the matching funds;
- In addition, a state can elect to transfer up to 30% of its Temporary Assistance for Needy

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[4] State plan requirements are described at 45 C.F.R. §§98.15 and 98.16.

[5] Ibid.

Families (TANF) block grant funds to the Child Care and Development Fund Program, in which case those funds are treated as CCDF discretionary funds and become subject to CCDF rules. (States may also choose to spend TANF funds directly on child care, in which case those services are not subject to any CCDF rules.)

For many purposes, the differences between the sources of funds don't matter, but in some cases, federal requirements are only applicable to a particular component of the CCDF funding structure.

A state must spend most of its CCDF funds on child care assistance for eligible families. Specifically, the law says that at least 70 percent of the Mandatory and Matching Funds must be used to meet the child care needs of families who are receiving TANF assistance, are attempting through work activities to transition off to TANF assistance, or are at risk of becoming dependent on TANF assistance. (As a practical matter, a state can define a very broad group of low income families as falling within these categories.) In addition, the state must spend at least 4% of its CCDF funds (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds) on "quality" activities (discussed below), and may elect to spend more. And, no more than 5% of the funds expended (i.e, Discretionary, Mandatory, and Federal and State share of Matching Funds) may be used for administrative activities. Of funds remaining, a state must spend a substantial portion to provide child care services to low-income working families[6] and are required to give priority for services to children of families with very low family income (considering family size and children with special needs).[7]

3. Eligible Children and Families

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[6] 45 C.F.R. §98.50.

[7] 45 C.F.R. §98.44.

States have substantial discretion in determining which children and families will be eligible for CCDF-funded assistance. Federal law establishes the outer limits of eligibility, but states are not required to provide assistance to all families who are potentially eligible under federal law, and the federal government has recently estimated that states are currently assisting only about 10% of the families potentially eligible under federal law.

Under the federal law, a family must have an "eligible child" in order to receive CCDF assistance:

- **Age:** To be eligible for child care services, a child must be under 13 years of age; or, at the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision.[8]
- **Financial Eligibility:** To be eligible, a child must reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size.[9] The income cap can be waived if necessary, on a case-by-case basis for families receiving or needing to receive protective services.[10] This waiver can also be extended to apply to children in foster care if the state elects to treat children in foster care to be children in protective services for purposes of CCDF eligibility.[11]

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[8] 45 C.F.R. §98.20(a)(1).

[9] 45 C.F.R. §98.20(a)(2)

[10] 45 C.F.R. §98.20(a)(3)(ii)(A)

[11] 45 C.F.R. §98.20(a)(3)(ii)(B)

- **Parental Status:** To be eligible, a child must reside with a parent[12] or parents who are working or attending a job training or educational program; or receive, or need to receive, protective services and reside with a parent or parents who are not working or attending a job training or educational program.
- **Other criteria:** A CCDF grantee or other administering agency may establish additional eligibility conditions or priority rules so long as they do not:
  - discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
  - limit parental rights; or
  - violate CCDF eligibility rules, the requirement for a priority for very low income families and special needs children, or the entity's CCDF Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.[13]

In practice, the effect of federal eligibility rules depends on how a state defines a number of key terms.[14]

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[12] "Parent" means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis. 45 C.F.R. §98.2.

[13] 45 C.F.R. §98.20(b)

[14] States must develop, and include in their CCDF plans, definitions of: (1) Special needs child; (2) Physical or mental incapacity (if applicable); (3) Attending (a job training or educational program); (4) Job training and educational program; (5) Residing with; (6) Working; (7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services; (8) Very low income; and (9) in loco parentis. 45 C.F.R. §98.16(f).

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It is up to each state to decide who is authorized to determine CCDF eligibility and where the eligibility determinations are made. Once a family is determined eligible, a state must periodically determine eligibility, but there are not specific federal requirements for when those redetermination of eligibility are made. A state may elect to maintain a waiting list if the state is not able to provide subsidy assistance to all who are eligible under state rules, but the state is not required to do so.

4. Program Services

Most of a state's expenditures under CCDF are for child care services for eligible low income families. Services are provided through a mixture of grants and contracts to providers and child care certificates (vouchers) provided to eligible families. A state establishes payment rates to be paid to providers, and must establish a sliding fee scale to determine the share of the cost of care provided to eligible families.

States have broad discretion in setting payment rates for providers and in determining the share of cost paid by families. There are, however, two key principles in the federal law which are intended to affect state choices: the principle of "equal access" and the principle of "parental choice."

A state's CCDF plan must certify that payment rates for the provision of child care services for which CCDF assistance is provided are "sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under other Federal, State, or tribal programs."[15] The state plan must provide a summary of the facts relied on by the State to determine

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[15] 45 C.F.R. §98.15(b)(7); 45 C.F.R. §98.43(a).

that the equal access requirements have been met.[16] At a minimum, the summary shall include facts showing:

- How a choice of the full range of providers, e.g., center, group, family, and in-home care, is made available;
- How payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;
- How copayments based on a sliding fee scale are affordable.

In guidance to states, HHS has stated that it will presume a state's payment rates are sufficient to provide equal access if, based on a market rate survey, the state's payments to providers are set at a level not lower than the 75th percentile of the local market rate, i.e., a rate high enough to encompass 75% of the local providers or slots. HHS has also said that a state's copayment scale would generally be considered affordable if it did not require families to expend more than 10% of their income for child care costs. While the 75th percentile and 10% copayment provisions offer important guidance to states, they are not formal regulatory requirements, and a state's payment rates and/or copayment requirements may not actually meet these standards. In fact, a 1998 review of CCDF plans by HHS' Office of the Inspector General (issued before the publication of final CCDF regulations) found that 29 out of 51 states did not make payments to child care providers based on the 75th percentile of the 1996 market rate.[17] The same review found that 22 states required copayment rates that exceed 10% of

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[16] 42 U.S.C. §9858c(4).

[17] HHS Office of Inspector General, **States' Child Care Certificate Systems: An Early Assessment of Vulnerabilities and Barriers** (February 1998).

family income. At this point, it is not yet known whether state plans submitted in 1999 came closer to reaching the federally recommended standards.

The parental choice requirement of federal laws says, in part, that state's CCDF plan must include an assurance that state and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice by:

- expressly or effectively excluding any category of care, type of provider, or any type of provider within a category of care; or
- having the effect of limiting parental access to or choice from among such categories of care or types of providers; or
- excluding a significant number of providers in any category of care or of any type of providers.[18]

As discussed below, state regulation of CCDF providers must be mindful that the state does not violate the parental choice provisions of the law.

Federal law does not specify the content of child care services provided under a state's CCDF program. Head Start has a set of federal requirements relating to education, health, parent involvement and social services. In contrast, there are no federal requirements relating to education, parent involvement, or social services for families receiving CCDF-assisted subsidies, though a state would not

[18] 45 C.F.R. §98.15(a)(5).

be precluded from developing such requirements (provided that they did not violate the "parental choice" requirements of CCDF). In the area of health, federal law does mandate that states have in effect, under State or local law requirements designed to protect the health and safety of children that are applicable to child care providers of services for which CCDF assistance is provided (except relatives). Such requirements must include:

- prevention and control of infectious diseases;
- a requirement that children receiving services are age-appropriately immunized (though states may opt to exempt children cared for by relatives, children cared for in their own homes, children whose parents object to immunization on religious grounds; and children whose medical condition contraindicates immunization)
- building and physical premises safety; and
- minimum health and safety training appropriate to the provider-setting.[19]

The CCDF lead agency must certify that there are procedures in effect to ensure that child care providers of services for which CCDF assistance is provided comply with all applicable State or local health and safety requirements described above.

Under federal regulations, in order to be an eligible child care provider for CCDF purposes, a provider must be:

- a center-based child care provider, group home child care provider, family child care provider, in-home child care provider of child care services for compensation that-

[19] 45 C.F.R. §92.41.

- is licensed, regulated, or registered under applicable State or local law; and
- satisfies State and local requirements, including health and safety requirements applicable to the child care services it provides; or

- a child care provider who is 18 years of age or older who provides child care services only to eligible children who are relatives and who complies with any applicable requirements that govern child care provided by the relative involved.[20]

Quality Expenditures

As noted previously, a state must spend not less than 4% of its CCDF funds for a set of activities often referred to as "quality" expenditures. Under federal regulations, these activities may include but are not limited to:

- Activities designed to provide comprehensive consumer education to parents and the public;
- Activities that increase parental choice; and
- Activities designed to improve the quality and availability of child care, including, but not limited to:
  - Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

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[20] 45 C.F.R. §98.2

- Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements;
- Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements;
- Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first-aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs.
- Improving salaries and other compensation (such as fringe benefits) for full-and part-time staff who provide child care services for which assistance is provided under this part; and
- Any other activities that are consistent with the intent of improving the quality and availability of care.[21]

In addition, federal appropriations acts have earmarked particular funds for other quality-related expenditures.

Standards and Monitoring

CCDF does not have national Performance Standards. It does have federal requirements that states have and enforce health and safety standards, as noted above. A state could choose to pay

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[21] 45 C.F.R. §98.51.

higher payment rates for providers meeting specified state performance standards, but a state probably could not impose performance standards on all providers benefitting from CCDF-assisted subsidies, because such a requirement would likely violate the "parental choice" requirements of federal law.

In contrast with Head Start, the federal government does not routinely monitor the performance of individual providers under CCDF. There is a limited federal role in monitoring state performance. The federal Department of Health and Human Services is authorized to monitor programs funded under the CCDF for compliance with federal law, though the law does not impose any specific requirement for periodic monitoring of state performance. If a review or investigation reveals evidence that the Lead Agency, or any entity providing services under contract or agreement with the Lead Agency, had failed to substantially comply with the state's CCDF Plan or with one or more provision of the Act or implementing regulations, the Secretary of Health and Human Services is authorized to take action, which can involve (after notice and hearing) imposing fiscal penalties or disallowances on states, disqualifying a lead agency, or imposing other sanctions.[22] The federal agency is also authorized to investigate complaints that a state has violated its plan or federal law.[23]

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[22] 45 C.F.R. §§98.90 - 98.92.

[23] 45 C.F.R. §98.93.

Staffing

There are no federal requirements for educational or other qualifications of staff of providers of CCDF-funded child care services. A state can elect to impose its own requirements (subject to the parental choice requirements of the law).

CCDF does not have a set-aside for training and technical assistance comparable to the 2% set-aside in Head Start. As noted, states are required to spend at least 4% of CCDF funds for "quality" expenditures but the state has many choices in deciding which initiatives should be undertaken to satisfy the 4% requirement. Thus, spending for training and technical assistance could, but need not, be part of state's CCDF expenditures.

There are no federal standards for adult-child ratios in child care for which CCDF funds are provided. A state can (subject to the parental choice provisions of the law) elect to impose its own standards.

Facilities

In contrast with Head Start, states are generally barred from using CCDF funds for construction. Specifically, for State or local agencies and nonsectarian agencies or organizations, no CCDF funds may be spent for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.[24] However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. For sectarian agencies or

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[24] 45 C.F.R. §98.2.

organizations, the basic prohibition above applies, with an additional restriction: Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with CCDF health and safety requirements.[25]

A different rule applies to tribes: HHS may authorize a tribe or tribal organization to expend CCDF funds for construction or renovation of child care facilities under certain circumstances.

5. Data collection

Federal law specifies a set of data reporting requirements for states in administration of their CCDF programs. Generally, the law requires monthly collection and quarterly reporting of detailed information concerning families receiving assistance, including information such as total monthly family income and sources of income; gender, age, ethnicity, race of children; length of child care assistance; type of care and amount of assistance, total monthly child care copayment by the family; and reasons for receiving care.[26] While states have been required to report this information, there have been various difficulties in data collection, and to date, the results of this data collection have not been disseminated.

In addition, the law requires reporting annually concerning the number of providers receiving funding, the monthly cost of child care services, the number of payments made by various methods of providing services; the manner in which consumer education was provided and the total number of children and families served.[27]

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[25] 45 C.F.R. §98.54.

[26] 45 C.F.R. §§98.70, 98.71.

[27] 45 C.F.R. §§98.70, 98.71.

6. Collaboration

In general

Federal law requires that in developing a CCDF plan, a state's lead agency must coordinate the provision of CCDF services with other Federal, State, and local child and early childhood development programs and must provide a description of the results of the coordination with each of these agencies in the CCDF Plan.[28] More generally, the lead agency is required to coordinate the provision of CCDF services with such programs,[29] and is also required to coordinate with the State (and if applicable, tribal) agencies responsible for public health, employment services/workforce development, public education, and TANF assistance.[30]

Coordination and Collaboration with Pre-Kindergarten Initiatives

A state may count state expenditures for pre-Kindergarten programs toward CCDF match and maintenance of effort expenditures under certain circumstances; federal law imposes a set of coordination requirements if the state elects to do so.

Specifically a state's expenditures for public pre-kindergarten can be eligible for federal match under CCDF if the state includes in its CCDF Plan a description of the efforts it will undertake to ensure that pre-Kindergarten programs meet the needs of working parents.[31] In addition, a state's expenditure for public pre-Kindergarten programs may be used to meet the state's CCDF

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[28] 45 C.F.R. §98.14.

[29] 45 C.F.R. §98.12.

[30] 45 C.F.R. §98.14.

[31] 45 C.F.R. §98.16(q); 45 C.F.R. §98.53(h)(2).

maintenance-of-effort requirement if the State has not reduced its expenditures for full-day/full-year child care services.[32] In any fiscal year, a State may use public pre-Kindergarten funds for up to 20 % of its maintenance of effort obligation and may use other public pre-Kindergarten funds for up to 20% of the expenditures serving as the State's matching funds. However, if the state intends to use public pre-Kindergarten funds for more than 10% of either its maintenance-of-effort or State matching funds in a fiscal year, the state must expressly so indicate in its state plan, and the Plan must describe how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care.[33]

[32] 45 C.F.R. §98.53(h)(1).

[33] 45 C.F.R. §98.53(h)(3),(h)(4).